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January 14, 2005

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Room 700  
Washington, D. C. 20423

213010

**RE:** Finance Docket No. 34505, *East Brookfield & Spencer Railroad, LLC—Lease and Operation Exemption—CSX Transportation, Inc.*

Dear Secretary Williams:

Enclosed are the original and 10 copies of Opposition to a Supplemental Petition to Revoke and three discs with the file Opposition.

Please time and date stamp the additional copy of this letter and the Opposition, and return them to our messenger. Thank you for your assistance.

If you have any questions, call or email me.

Sincerely yours,

Louis E. Gitomer  
Attorney for CSX Transportation, Inc.

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Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34505

EAST BROOKFIELD AND SPENCER RAILROAD, LLC—LEASE AND OPERATION  
EXEMPTION—CSX TRANSPORTATION, INC.

OPPOSITION OF CSX TRANSPORTATION, INC. TO UNITED TRANSPORTATION  
UNION SUPPLEMENTAL PETITION TO REVOKE



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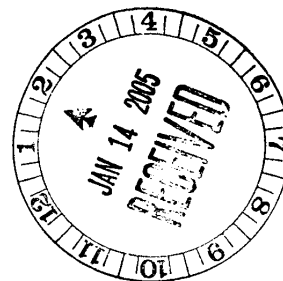
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(202) 638-3307

Attorneys for: CSX TRANSPORTATION, INC.

Dated: January 14, 2005

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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EAST BROOKFIELD AND SPENCER RAILROAD, LLC—LEASE AND OPERATION  
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OPPOSITION OF CSX TRANSPORTATION, INC. TO UNITED TRANSPORTATION  
UNION SUPPLEMENTAL PETITION TO REVOKE

CSX Transportation, Inc. (“CSXT”) opposes the Supplemental Petition to Revoke (the “Supplement”) filed on December 20, 2004, by the United Transportation Union (“UTU”). CSXT respectfully requests the Surface Transportation Board (“Board”) to deny UTU’s request to revoke the notice of exemption that permits the East Brookfield and Spencer Railroad, LLC (“EB&SR”) to lease and operate about a four-mile line of CSXT’s railroad between mileposts 60 and 64 in East Brookfield and Spencer in Worcester County, MA, including approximately 270 feet of lead track running from the passing track at milepost 63.08 to the property line of the New England Automotive Gateway Facility (the “Gateway Facility”) in East Brookfield, MA (the “Line”).

**BACKGROUND**

As UTU points out in the Supplement, a new vehicle distribution terminal and related facilities have been constructed in Spencer and East Brookfield, MA, which is operated by Northeast Vehicle Services, LLC (“Northeast”). Rail service within the Gateway Facility is provided to Northeast by EB&SR pursuant to a Rail Services Agreement dated October 1, 2004, between Northeast and EB&SR. Supplement, Page EB&SR00562.

The Gateway Facility and the Line are separate properties. See Supplement, Page EB&SR00507. Within the Gateway Facility, EB&SR will provide switching service for Northeast. CSXT has never operated within the Gateway Facility, a completely new facility. Outside of the Gateway Facility, on the Line where CSXT has operated, EB&SR will provide common carrier service over this line of railroad. The Line connects the Gateway Facility to the national rail system. The Line was transferred to Conrail under the Final System Plan, and acquired by CSXT as part of the Conrail Transaction. EB&SR sought exemption from the Board to lease and operate the Line, which is part of the national railroad system, but not did not seek authority to provide switching services within the Gateway Facility, as excepted by 49 U.S.C. § 10906.

CSXT entered a Track Lease Agreement (the "Track Lease") with EB&SR as of April 23, 2004, to lease the Line to EB&SR. Supplement, Page EB&SR00494. CSXT reserved certain typical rights to operate over the Line, as long as CSXT did not interfere with EB&SR's operations. Supplement, Pages EB&SR00495 and 6. CSXT and EB&SR also entered an Interchange Agreement to govern the interchange of rail cars. Supplement, Page EB&SR00481.

Pursuant to Section 5 of the Track Lease (Supplement, Page EB&SR00496-7), EB&SR, a non-carrier, under 49 U.S.C. § 10901 filed a Notice of Exemption in compliance with 49 C.F.R. § 1150.31 with the Board on May 12, 2004 (the "Notice"). EB&SR started operating under the lease on October 18, 2004. The Board served a notice on June 8, 2004.<sup>1</sup>

Over four months after EB&SR filed the notice of exemption, UTU filed a Petition to Revoke on October 20, 2004 (the "Petition") alleging that: (1) the lease did not fall within the non-carrier class exemption in 49 C.F.R. § 1150.32, *et seq.*; (2) regulation of the lease is required

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<sup>1</sup> *East Brookfield & Spencer Railroad, LLC—Lease and Operation Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 34505 (STB served June 8, 2004).

to carry out the rail transportation policy of 49 U.S.C. § 10901; and (3) the notice of exemption filed on May 12, 2004, contained false and misleading information. At the same time, UTU sought discovery.

EB&SR filed a Reply to Petition to Revoke on November 10, 2004 (the “Reply”) pointing out that UTU had made no specific allegations in the Petition that warranted revocation of the exemption. On November 12, 2004, EB&SR filed a Motion for a Protective Order (the “Motion”) so that it could respond to UTU’s discovery request without making confidential agreements public. The Board expeditiously granted the Motion.<sup>2</sup> EB&SR produced responses to UTU’s discovery requests on November 23, 2004, the day after UTU had executed the undertaking required by the *Protective Order*.

UTU requested an extension to file the Supplement on December 1, 2004. The Board granted the extension for UTU to file until December 20, 2004, and for EB&SR and CSXT to respond to January 14, 2005.<sup>3</sup>

In the Supplement, UTU argues that the Notice should be revoked allegedly because it contains false and misleading information and because the transaction was not *bona fide*, but instead was designed to remove jobs from under a UTU collective bargaining agreement with CSXT. For the reasons set forth below, UTU’s allegations are without merit, and the request to revoke the exemption made in the Petition and the Supplement should be denied.

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<sup>2</sup> *East Brookfield & Spencer Railroad, LLC–Lease and Operation Exemption–CSX Transportation, Inc.*, STB Finance Docket No. 34505 (STB served November 18, 2004) (the “*Protective Order*”).

<sup>3</sup> *East Brookfield & Spencer Railroad, LLC–Lease and Operation Exemption–CSX Transportation, Inc.*, STB Finance Docket No. 34505 (STB served December 6, 2004).

## ARGUMENT

### I. The Notice Of Exemption Does Not Contain False Or Misleading Information.

UTU alleges “that the notice of exemption contains false and misleading information.”

Supplement at 2. However, nowhere in the Supplement does UTU specify the “false and misleading information.”

In this proceeding, EB&SR was a non-carrier seeking to commence common carrier operations through a lease from CSXT. As such, EB&SR was required to obtain approval from the Board to commence operations under 49 U.S.C. § 10901(a)(4).<sup>4</sup> In order to expedite and encourage the creation of new short line railroads, a class exemption from the approval process under section 10901 was adopted.<sup>5</sup> The Board’s rules implementing the exemption require a party filing a notice of exemption to provide certain information (49 C.F.R. § 1150.33) and to verify the accuracy of the information presented (49 C.F.R. § 1150.32(a)).

The notice filed by EB&SR provided all of the information required by 49 C.F.R. § 1150.33. The accuracy of the information in the notice was verified by Mr. George W. Bell II.

UTU, as petitioner, “must demonstrate that the notice contains false or misleading information.”<sup>6</sup> In *Minnesota Northern*, the labor petitioners made five specific arguments concerning false and misleading information that was contained in the notice in that proceeding. The Board rejected all of petitioner’s arguments concerning false and misleading information because they were minor, of no consequence, or *de minimis*.<sup>7</sup> In this proceeding, UTU has not made any specific claims as to those portions of the Notice that are false or misleading. UTU

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<sup>4</sup> *Application Proc.—Construct, Acq. Or Oper. R. Lines*, 365 I.C.C. 516, 518 (1982).

<sup>5</sup> *Class Exemption—Acq. & Oper. Of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985).

<sup>6</sup> *Minnesota Northern Railroad, Inc. —Exemption—Acquisition and Operation of Rail Line and Incidental Trackage Rights from Burlington Northern Railroad Company*, STB Finance docket No. 33315 (STB served August 14, 1997), at 3 (“*Minnesota Northern*”).

<sup>7</sup> *Id.*, at 3-5.

merely makes the statement without any support or specificity. As the party that must “demonstrate” false and misleading information, UTU has failed to meet its burden.

Since there has been no demonstration of false and misleading information by UTU, CSXT respectfully requests the Board to deny UTU’s request to reject the Notice on that basis.

II. The Underlying Real Estate And Service Contracts Do No Provide A Basis for Revocation.

UTU contends that, because the business relationships leading to the development of the new Gateway Facility were complicated (a “tangled web”), the lease of track by CSXT to EB&SR was allegedly “a device created merely to move a number of jobs out from under a collective bargaining agreement onto a nonunion carrier.” UTU further alleges that “the circumstances surrounding the transaction indicate that the transaction was not motivated by a desire of the parties to realize legitimate business goals,” Supplement at 7, without ever identifying what those circumstances are. Those inchoate arguments also provide no basis for revocation of EB&SR’s exemption.

Attached hereto are verified statements of Mr. Richard M. Hood and Mr. Andrew Strok. Mr. Hood explains the reasons for the structure of the real estate transaction. Mr. Strok provides the context for the creation of the Gateway Facility and the related lease entered into between CSXT and EB&SR. The statements of Mr. Hood and Mr. Strok are the basis of the discussion that follows.

UTU appears to contend that its collective bargaining agreements give its members the right to crew all trains that perform switching operations within auto ramps without regard to ownership of the ramps. UTU, however, does not identify the collective bargaining agreement that supposedly grants its members such rights. In fact, nothing in CSXT’s agreements with UTU requires CSXT to build, own, or operate auto ramps. CSXT does not own or operate the

Gateway Facility. Moreover, there is no contractual basis for UTU to claim work performed at that location. Thus, the entire predicate for UTU's argument that the lease to EB&SR was not *bona fide* is without basis. CSXT is not aware that UTU has ever filed a grievance under its collective bargaining agreements with CSXT alleging that the performance of switching by EB&SR violates a term in those agreements. Nor has the work of switching the Gateway Facility previously been done by CSXT employees. In any event, there were legitimate business reasons for the development of the Gateway Facility, which were driven by the need to be responsive to CSXT's largest shipper of automobiles.

At an auto ramp, new automobiles are unloaded from specialized railroad cars into parking areas to await transportation by haul-away trucking companies to retail automobile dealers. Prior to the opening in October 2004 of the Gateway Facility, CSXT served or utilized three auto ramps in Massachusetts: one each in Framingham, Westboro, and Ayer. The Framingham Facility is approximately 21 miles west of Boston. This facility has historically served General Motors, Toyota, Nissan, and Mercedes Benz. The Westboro Facility was located approximately 33 miles west of Boston. Westboro had served several automotive customers, including Chrysler, Honda, Mazda, Subaru, Suzuki, Isuzu, and Ford. The Framingham and Westboro facilities are former Conrail facilities. CSXT acquired them as a result of the Conrail Transaction.<sup>8</sup> The Ayer Facility is located approximately 37 miles northwest of Boston.

Operations at the Framingham Facility are restricted by two city ordinances.<sup>9</sup> The Framingham Facility is located in an historic residential area, surrounded by narrow streets on which traffic noise can present problems for residents. One town ordinance, enacted on April 23,

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<sup>8</sup> *CSX Corp. et al. - Control-Conrail Inc. et al.*, 3 S.T.B. 196 (1998).

<sup>9</sup> In this pleading, CSXT is not addressing the validity of the restrictions on interstate commerce in those ordinances.



1990, limits the hours of operation as follows:

The unloading of automobiles from railcars and the loading or preparation for loading of the car carriers at the automotive terminal by Conrail shall begin no earlier than 7:00 a.m. Monday through Friday, no earlier than 8:00 a.m. on Saturday and no earlier than 9:00 a.m. on Sunday. Provided, however, that car carriers may enter the terminal after 6:00 a.m. Monday through Friday.

The 1990 ordinance also states that:

Conrail shall use all reasonable efforts to complete coupling, uncoupling and/or switching operations and operation of trains in and out of the terminal by 10:00 p.m. The aforesaid activities shall commence no earlier than 7:00 a.m. The only exceptions to these hours of operation shall be as a result of track repairs, weather conditions and other emergencies. Any such exceptions shall be reported in writing to the Building Commissioner of the Town of Framingham within seven (7) calendar days of their occurrence.

This 1990 ordinance also places additional operational conditions on the Framingham Facility, including the requirement that "Conrail shall enforce a minimum headway of at least two minutes between departures of car carriers [trucks] from the terminal." A second ordinance, enacted on June 9, 1992, addresses an additional part of the Framingham Facility, which handles Toyota shipments. The 1992 ordinance similarly imposes curfews on the operations there. The ordinance provides:

The car carriers [trucks] operate primarily Monday through Friday.  
The car carriers will begin entering the facility after 6:00 a.m. . . .  
The gates of the facility will be locked at 6:00 p.m. . . .

Although the ordinances refer to Conrail, they apply to CSXT by virtue of CSXT's acquisition of the Framingham Facility in the Conrail Transaction.

GM, CSXT's largest automotive customer (and the largest CSXT customer served at the Framingham Facility), expressed concern over the operational limitations on the Framingham Facility. CSXT twice attempted to obtain changes to the local ordinances, but without success.

Moreover, because of its location and these restrictions, it was not possible to expand the Framingham Facility. Neither the Westboro nor the Ayer Facility could handle the GM business.

Land suitable for a new auto ramp, with expansion possibilities, which can receive the necessary permits, and is located adjacent to CSXT's mainline in east central Massachusetts, is not easy to come by. The Seven Mile River Nominee Trust ("Seven Mile Trust") owned such a parcel in East Brookfield and Spencer, MA. The principals in the Seven Mile Trust were interested in using their land for a new auto ramp. They, however, had prior experience in operating distribution facilities and would only proceed if they operated the new ramp. Thus, a condition of their agreement to sell this parcel was that they operate the new auto ramp.

The development of the facility included several steps. The Seven Mile Trust first sold the land to Holston Land Company ("Holston"), a land holding company, which is an affiliate of CSXT, but is not a railroad. Holston was the purchaser of the property to effectuate a like kind exchange under the Tax Code of 1986.<sup>10</sup> The purchase of the property by Holston was part of such an exchange. Holston then leased the land on a long-term basis to CSX Real Property, Inc. ("CSX Real Property"), which developed the property.<sup>11</sup> CSX Real Property then developed the auto ramp at East Brookfield.

The principals in Seven Mile Trust formed Northeast to operate the new facility. In furtherance of the contractual commitment that Northeast operate the auto ramp, CSX Real Property subleased the auto ramp facility, which is called the Gateway Facility.

CSXT entered into a services agreement with Northeast (the "Vehicle Terminal Services Agreement"), pursuant to which Northeast performs the service for CSXT's automotive shippers

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<sup>10</sup> 26 U.S.C. § 1031.

<sup>11</sup> UTU is mistaken that CSX Real Property is a subsidiary of CSXT. CSX Real Property is a wholly owned subsidiary of CSX Corporation. CSX Real Property acquires and develops real estate for a variety of uses.

of unloading new automobiles from railcars at the new auto ramp. Contrary to UTU's allegations, the Vehicle Terminal Services Agreement does not give CSXT the right to control Northeast. Northeast is an independent party responsible for the day-to-day operation of its auto ramp, just as third parties operate other auto ramps handling CSXT traffic, such as Ayer.

The principals in Northeast also wanted to control their own rail operation at the ramp. They formed EB&SR to perform switching services within the Gateway Facility, and to interchange railcars with CSXT. CSXT entered into a long-term lease of existing track to EB&SR for its rail operations. CSXT also entered into an interchange agreement with EB&SR. The terms of the lease and interchange agreements are similar to those that CSXT has entered with other short line railroads.

Thus, there were legitimate business reasons for the transactions underlying the creation and operation of the Gateway Facility and the lease between CSXT and EB&SR. Many of CSXT's customers perform switching at their facilities or contract with someone other than CSXT for their switching. Additionally, the Gateway Facility was constructed to address the needs of GM in the Boston area, as well as other automotive customers. There was no requirement that CSXT build, own, operate or provide switching services for this facility. Certainly, the UTU does not contend that its agreements with CSXT required it to do so. The commercial arrangements were arm's length transactions. Neither CSXT nor any of its affiliates control or have any interest in Seven Mile Trust, Northeast, or EB&SR.

In the Supplement, UTU makes passing reference to *Sagamore Nat'l Corp. – Acquisition and Operation Exemption – Lines of Indiana Hi-Rail Corp.*, ICC Finance Docket No. 32523 (ICC served October 28, 1994) ("*Saganat I*"), but fails to explain how this decision allegedly relates to the present matter. In fact, *Saganat II* is totally distinguishable from the present

proceeding. In *Saganat II*, Sagamore National Corporation (“Saganat”) filed a notice of exemption to acquire 398 miles of rail from Indiana Hi-Rail Corporation (“Hi-Rail”), which the Interstate Commerce Commission (the “ICC”) rejected. In doing so, the ICC relied upon reasons that have no application in the present case. For instance, the ICC concluded that the evidence in *Saganat II* showed “substantial identity in interest between Hi-Rail and Saganat,” because Hi-Rail and Saganat had the same address and UTU presented evidence that both entities had the same president. *Id.* In addition, the ICC had previously noted that Saganat and Hi-Rail had the same general counsel, the same executive vice president, and the same office manager.<sup>12</sup> The ICC also noted UTU’s assertion that two senior executives of Hi-Rail comprise a majority of Saganat’s interim Board of Directors. *Id.*

In contrast to the circumstances in *Saganat I* and *Saganat II*, there is no claim that CSXT and EB&SR are not separate and independent entities. They clearly are. As explained, CSXT has no ownership interest in EB&SR, which is an independent carrier. There is no overlap in management between the two carriers. Furthermore, unlike in *Saganat I* and *Saganat II*, the parties in the present proceeding entered into arm’s length transactions for legitimate business purposes. As noted, EB&SR was formed by the operators of the new automotive distribution facility that it is serving. Contrary to UTU’s implications, CSXT and EB&SR cannot be deemed to be the same entity merely because they have agreed that EB&SR will use CSXT’s safety rules and regulations and radio frequencies on the leased track or because CSXT has retained the right to use the leased track for certain purposes. These are typical aspects of leases to short lines.

The Board has previously rejected vague UTU objections to arm’s length transactions such as those at issue in the present proceeding, where independent carriers enter into

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<sup>12</sup> *Sagamore Nat’l Corp. – Acquisition and Operation Exemption – Lines of Indiana Hi-Rail Corp.*, ICC Finance Docket No. 32523 (ICC served August 26, 1994) (“*Saganat I*”).

arrangements to meet legitimate business goals. For instance, UTU opposed a petition for exemption regarding the lease of track by Burlington Northern Railroad Company ("BN") to a short line railroad, Portland & Western Railroad, Inc. ("P&W").<sup>13</sup> As here, UTU "questioned the bona fides of the transaction" and argued that the lease was a device created merely to move a number of jobs out from under a collective bargaining agreement to a nonunion carrier. However, the Board rejected UTU's arguments in *P&W*, concluding that the lease was not intended to avoid collective bargaining agreement obligations and that "the circumstances surrounding the transaction indicate that the transaction was motivated by a desire of the lessor and lessee to realize legitimate business goals."<sup>14</sup>

One reason that the Board found the lease there to be *bona fide* was that affected shippers had generally indicated that they were dissatisfied with the service they were receiving from BN prior to the lease arrangement. Similarly, as explained above, customer dissatisfaction with the status quo in the present case (i.e., GM's dissatisfaction with the operational restrictions at the Framingham Facility) was a factor contributing to the opening of the Gateway Facility and the lease to EB&SR, and, further, the operator of the Gateway Facility decided that it wanted EB&SR to switch its facility.

In addition, other factors considered by the Board in *P&W* support the carriers' position in the present case. For instance, P&W and BN made clear to the Board that the entities involved were "independent, unaffiliated entities." In reaching its holding, the Board expressly relied upon this factor. The record in the present case shows that CSXT and EB&SR are wholly independent entities. Also, in both proceedings, the lessee maintained a significant degree of

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<sup>13</sup> *Portland & Western R.R., Inc. – Lease and Operation Exemption – Lines of Burlington Northern R.R. Co.*, STB Finance Docket 32766 (STB served October 15, 1997) ("*P&W*").

<sup>14</sup> *Id.* at 5.

independence from the lessor with respect to its rail operations on the leased track and the maintenance of the track. Moreover, EB&SR carries “the basic entrepreneurial risk that the venture will not succeed financially.” EB&SR is solely responsible for its financial success or failure.

III. UTU Fails To Show That Lease Is Contrary To Requirements Of Section 10901.

The Subpart D—Exempt Transactions Under 49 U.S.C. 10901 applies to leases.<sup>15</sup> The Line leased to EB&SR existed and was operated before the Gateway Facility was conceived, much less constructed.

Through the Track Lease, CSXT has granted temporary possession and use of the Line to EB&SR, imposed certain obligations on EB&SR, and retained certain rights.

In the Supplement, pages 3-6, UTU identifies a number of requirements imposed on EB&SR through contractual agreements with CSXT. UTU then concludes that CSXT “has maintained significant control over the operation of this track” and “has maintained substantial control over the Property ... to maintain control of the automotive distribution terminal.” Supplement at 7-8. UTU is wrong.

Whenever CSXT leases or sells one of its railroad lines to a new short line operator, CSXT seeks to ensure a smooth transition, to encourage safe and efficient service, and to protect its interests. In entering the Track Lease and Interchange Agreement with EB&SR, CSXT followed these principles.

CSXT sought to ensure a smooth transition and encourage efficient and safe service by requiring EB&SR to use the same radio frequencies, follow CSXT’s safety rules and regulations,

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<sup>15</sup> *Class Exemption—Acq. & Oper. Of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985), which states “The terms ‘acquire’ or ‘operate’ include interests in railroad lines of a lesser extent than fee simple ownership, such as a lease or a right to operate.”

and interchange traffic with CSXT pursuant to an agreement. Because CSXT and EB&SR set out and pick up freight cars on the same track to effectuate interchange, this kind of coordination is necessary and customary in the railroad industry.

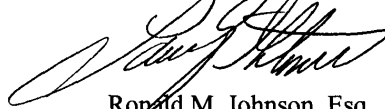
CSXT sought to protect its interests in the Line and its rail operation by reserving the right to interchange traffic headed to and from the Gateway Facility on the Line, by using the Line in case of an emergency on another CSXT line, by reserving the right to permit improvements on the Line (wires, pipes, other utilities, etc.) that did not interfere with EB&SR's operation, by reserving the right to alter the track with EB&SR's permission, by requiring EB&SR to notify CSXT of hazardous material spills, and by requiring EB&SR to name CSXT as an additional insured.

EB&SR properly sought exemption for its lease and operation of the Line from CSXT under 49 C.F.R. § 1150.31. The rights reserved by CSXT were typical for a new short line operation, and intended only to ensure a smooth transition to EB&SR's operation, to facilitate efficient and safe operations, and to protect CSXT's interests in the Line.

## CONCLUSION

UTU has failed to justify revocation of the exemption in this proceeding. The Track Lease between CSXT and EB&SR is a *bona fide* transaction based on substantial business reasons and was not entered into for the purpose of removing work from under CSXT's collective bargaining agreement with UTU. Accordingly, CSXT respectfully requests the Board to deny the Petition and Supplement.

Respectfully submitted,



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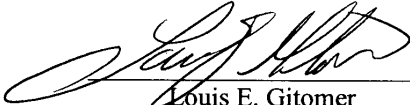
Attorneys for: CSX TRANSPORTATION, INC.

Dated: January 14, 2005



**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the Opposition of CSX Transportation, Inc. to United Transportation Union Supplemental Petition to Revoke to be served upon counsel for all parties of record by first class mail postage prepaid.

  
\_\_\_\_\_  
Louis E. Gitomer  
January 14, 2005

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 34505

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EAST BROOKFIELD AND SPENCER RAILROAD, LLC—LEASE AND OPERATION  
EXEMPTION—CSX TRANSPORTATION, INC.

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VERIFIED STATEMENT OF RICHARD M. HOOD

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1. My name is Richard M. Hood. I serve as Assistant Vice President for CSX Real Property, Inc. (“CSX Real Property”), and I have served in this position for one (1) year. I have worked at CSX Real Property or predecessor companies since 1980. In my role as Assistant Vice President, my responsibilities include the acquisition and development of real estate in support of the company’s needs and operating objectives. The purpose of this declaration is to explain the real estate transactions that relate to the creation of the New England Automotive Gateway Facility (the “Gateway Facility”).

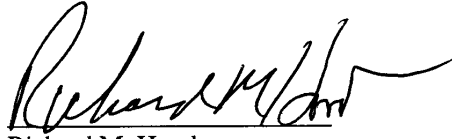
2. The Seven Mile River Nominee Trust (“Seven Mile Trust”) owned a parcel of land in East Brookfield and Spencer, Massachusetts. The principals in the Seven Mile Trust were interested in using their land for a new auto ramp. They, however, had prior experience in operating distribution facilities and would only sell the land if they could operate the new ramp. Accordingly, a condition of their agreement to sell this parcel was that they operate the new auto ramp.

3. The Seven Mile Trust sold this property to Holston Land Company, Incorporated (“Holston”), a land holding company, which is an affiliate of CSX Transportation, Inc.

("CSXT"), but is not a railroad. Holston was the purchaser of the property to effectuate a like kind exchange under the Tax Code of 1986. Holston then leased the land on a long-term basis to CSX Real Property. CSX Real Property is a wholly owned subsidiary of CSX Corporation that acquires and develops real estate for a variety of uses. CSX Real Property leased the land and developed the auto ramp at East Brookfield.

4. In furtherance of the contractual commitment that Seven Mile Trust operate the auto ramp, CSX Real Property subleased the auto ramp facility, which is called the Gateway Facility, to Northeast Vehicle Services, LLC ("Northeast"). The principals in Seven Mile Trust formed Northeast to operate the new facility.

I hereby state under penalty of perjury that the facts set forth herein are true and correct  
to the best of my knowledge, information and belief.

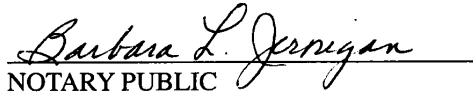


Richard M. Hood

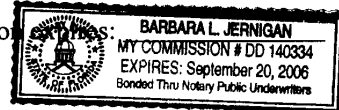
STATE OF FLORIDA )

COUNTY OF DUVAL )

Subscribed to and sworn by me, this 13<sup>th</sup> day of JANUARY, 2005.

  
NOTARY PUBLIC

My commission



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 34505

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EAST BROOKFIELD AND SPENCER RAILROAD, LLC—LEASE AND OPERATION  
EXEMPTION—CSX TRANSPORTATION, INC.

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VERIFIED STATEMENT OF ANDREW STROK

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1. My name is Andrew Strok, and I serve as Assistant Vice President – Automotive Service Group for CSX Transportation, Inc. (“CSXT”). I have served in this position for four years, and I have worked at CSXT since 1996. As Assistant Vice President – Automotive Service Group, my responsibilities include business development, among other things. The purpose of this declaration is to provide context for the creation of the New England Automotive Gateway Facility (the “Gateway Facility”) and the related lease entered into between CSXT and the East Brookfield and Spencer Railroad (“EB&SR”).

2. At auto ramps, new automobiles are unloaded from railroad cars into parking areas to await transportation by haul-away trucking companies to retail automobile dealers. Prior to the opening in October 2004 of the Gateway Facility, located in East Brookfield and Spencer, Massachusetts, CSXT served or utilized three auto ramps in that state: one each in Framingham, Westboro, and Ayer. The Framingham Facility is approximately 21 miles west of Boston. This facility has historically handled automobiles produced by General Motors, Toyota, Nissan, and Mercedes Benz. The Westboro Facility was located approximately 33 miles west of Boston. Westboro had several automotive customers, including Chrysler, Honda, Mazda, Subaru, Suzuki,

and Isuzu. The Framingham and Westboro facilities were former Conrail facilities. CSXT acquired them as a result of the Conrail Transaction. The Ayer Facility is located approximately 37 miles northwest of Boston and serves Ford. CSXT does not own the Ayer facility.

3. Operations at the Framingham Facility are restricted by two city ordinances. The Framingham Facility is located in a residential area, surrounded by narrow streets on which traffic noise can present problems for residents. It is my understanding that the city ordinances restrict the hours of operation for the Framingham Facility, limiting the railroad's productivity at that site.

4. GM, CSXT's largest automotive customer (and the largest customer at the Framingham Facility), expressed concern over the operational limitations on the Framingham Facility. CSXT twice attempted to obtain changes to the local ordinances, but without success. Moreover, because of its location and these restrictions, it was not possible to expand the Framingham Facility. Also, neither the Westboro nor the Ayer Facility could handle the GM business.

5. CSXT has entered into a services agreement with Northeast Vehicle Services, LLC ("Northeast"), which states that Northeast would perform the service for CSXT's automotive shippers of unloading new automobiles from railcars at a new auto ramp that was built in East Brookfield and Spencer, Massachusetts. The Vehicle Terminal Services Agreement does not give CSXT the right to control Northeast. Northeast is an independent party responsible for the day-to-day operation of the auto ramp, just as third parties operated other auto ramps served by CSXT, such as Ayer.

6. The principals in Northeast also wanted to control their own rail operation of the ramp. They formed the East Brookfield & Spencer Railroad ("EB&SR") to perform switching

services within the Gateway Facility and to interchange railcars with CSXT. CSXT entered into a long-term lease of track to EB&SR for its rail operations. CSXT also entered into an interchange agreement with EB&SR. The terms of the lease and interchange agreements are similar to those that CSXT has entered with other short line railroads.

I hereby state under penalty of perjury that the facts set forth herein are true and correct to the best of my knowledge, information and belief.

Andrew Strok  
Andrew Strok

STATE OF FLORIDA )  
 )  
COUNTY OF DUVAL )

Subscribed to and sworn by me, this 13<sup>th</sup> day of JANUARY, 2005.

Barbara L. Jernigan  
NOTARY PUBLIC

My commission expires:

